

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
Southern Division**

**ANTHONY P.,**

**Plaintiff,**

**v.**

**ANDREW M. SAUL,  
Commissioner of Social Security,**

**Defendant.**

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**Civil No. TMD 20-896**

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**MEMORANDUM OPINION GRANTING PLAINTIFF’S  
ALTERNATIVE MOTION FOR REMAND**

Plaintiff Anthony P. seeks judicial review under 42 U.S.C. § 405(g) of a final decision of the Commissioner of Social Security (“Defendant” or the “Commissioner”) denying his application for disability insurance benefits under Title II of the Social Security Act. Before the Court are Plaintiff’s Motion for Summary Judgment and alternative motion for remand (ECF No. 12) and Defendant’s Motion for Summary Judgment (ECF No. 13).<sup>1</sup> Plaintiff contends that the administrative record does not contain substantial evidence to support the Commissioner’s decision that he is not disabled. No hearing is necessary. L.R. 105.6. For the reasons that follow, Plaintiff’s alternative motion for remand (ECF No. 12) is **GRANTED**.

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<sup>1</sup> The Fourth Circuit has noted that, “in social security cases, we often use summary judgment as a procedural means to place the district court in position to fulfill its appellate function, not as a device to avoid nontriable issues under usual Federal Rule of Civil Procedure 56 standards.” *Walls v. Barnhart*, 296 F.3d 287, 289 n.2 (4th Cir. 2002). For example, “the denial of summary judgment accompanied by a remand to the Commissioner results in a judgment under sentence four of 42 U.S.C. § 405(g), which is immediately appealable.” *Id.*

## I

### **Background**

On January 22, 2019, Administrative Law Judge (“ALJ”) Robert R. Schriver held a hearing in New York where Plaintiff and a vocational expert (“VE”) testified. R. at 41-71. The ALJ thereafter found on February 12, 2019, that Plaintiff was disabled for a closed period from May 7, 2015, through October 16, 2016, but not thereafter. R. at 21-40. In so finding, the ALJ found that, during the closed period, Plaintiff had not engaged in substantial, gainful activity and that he had severe impairments. R. at 29. During the closed period, however, he did not have an impairment or combination of impairments that met or medically equaled the severity of one of the impairments listed in 20 C.F.R. pt. 404, subpt. P, app. 1. R. at 29-30. The ALJ then found that, during the closed period, Plaintiff had the residual functional capacity (“RFC”) “to perform sedentary work as defined in 20 CFR 404.1567(a), except that he could stand and/or walk for only 1 hour and sit for only 4 hours in an 8-hour workday; could lift no more than 5 pounds; and could never stoop.” R. at 30.<sup>2</sup> The ALJ found that, during the closed period, Plaintiff could not perform his past relevant work and that no jobs existed in significant numbers in the national economy that he could have performed. R. at 31-32. Plaintiff thus was disabled from May 7, 2015, through October 16, 2016. R. at 32.

The ALJ then found that, beginning on October 17, 2016, Plaintiff had the RFC to perform sedentary work with only occasional stooping. R. at 33. In light of this RFC and the VE’s testimony, the ALJ found that, although he remained unable to perform his past relevant

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<sup>2</sup> “Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools.” 20 C.F.R. § 404.1567(a). “Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.” *Id.*

work, Plaintiff could perform other work in the national economy beginning on October 17, 2016, such as a call-out operator, table worker, or food and beverage order clerk. R. at 34-36. The ALJ thus found that Plaintiff's disability ended on October 17, 2016, and that he had not become disabled again since that date. R. at 36.

After the Appeals Council denied Plaintiff's request for review, Plaintiff filed on April 5, 2020, a complaint in this Court seeking review of the Commissioner's decision. Upon the parties' consent, this case was transferred to a United States Magistrate Judge for final disposition and entry of judgment. The case then was reassigned to the undersigned. The parties have briefed the issues, and the matter is now fully submitted.

## II

### **Disability Determinations and Burden of Proof**

The Social Security Act defines a disability as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve months. 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A); 20 C.F.R. §§ 404.1505, 416.905. A claimant has a disability when the claimant is "not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists . . . in significant numbers either in the region where such individual lives or in several regions of the country." 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

To determine whether a claimant has a disability within the meaning of the Social Security Act, the Commissioner follows a five-step sequential evaluation process outlined in the regulations. 20 C.F.R. §§ 404.1520, 416.920; *see Barnhart v. Thomas*, 540 U.S. 20, 24-25, 124

S. Ct. 376, 379-80 (2003). “If at any step a finding of disability or nondisability can be made, the [Commissioner] will not review the claim further.” *Thomas*, 540 U.S. at 24, 124 S. Ct. at 379; *see* 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4). The claimant has the burden of production and proof at steps one through four. *See Bowen v. Yuckert*, 482 U.S. 137, 146 n.5, 107 S. Ct. 2287, 2294 n.5 (1987); *Radford v. Colvin*, 734 F.3d 288, 291 (4th Cir. 2013).

First, the Commissioner will consider a claimant’s work activity. If the claimant is engaged in substantial gainful activity, then the claimant is not disabled. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i).

Second, if the claimant is not engaged in substantial gainful activity, the Commissioner looks to see whether the claimant has a “severe” impairment, i.e., an impairment or combination of impairments that significantly limits the claimant’s physical or mental ability to do basic work activities. *Pass v. Chater*, 65 F.3d 1200, 1203 (4th Cir. 1995); *see* 20 C.F.R. §§ 404.1520(c), 404.1522(a), 416.920(c), 416.922(a).<sup>3</sup>

Third, if the claimant has a severe impairment, then the Commissioner will consider the medical severity of the impairment. If the impairment meets or equals one of the presumptively disabling impairments listed in the regulations, then the claimant is considered disabled, regardless of age, education, and work experience. 20 C.F.R. §§ 404.1520(a)(4)(iii), 404.1520(d), 416.920(a)(4)(iii), 416.920(d); *see Radford*, 734 F.3d at 293.

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<sup>3</sup> The ability to do basic work activities is defined as “the abilities and aptitudes necessary to do most jobs.” 20 C.F.R. §§ 404.1522(b), 416.922(b). These abilities and aptitudes include (1) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (2) capacities for seeing, hearing, and speaking; (3) understanding, carrying out, and remembering simple instructions; (4) use of judgment; (5) responding appropriately to supervision, co-workers, and usual work situations; and (6) dealing with changes in a routine work setting. *Id.* §§ 404.1522(b)(1)-(6), 416.922(b)(1)-(6); *see Yuckert*, 482 U.S. at 141, 107 S. Ct. at 2291.

Fourth, if the claimant's impairment is severe, but it does not meet or equal one of the presumptively disabling impairments, then the Commissioner will assess the claimant's RFC to determine the claimant's "ability to meet the physical, mental, sensory, and other requirements" of the claimant's past relevant work. 20 C.F.R. §§ 404.1520(a)(4)(iv), 404.1545(a)(4), 416.920(a)(4)(iv), 416.945(a)(4). RFC is a measurement of the most a claimant can do despite his or her limitations. *Hines v. Barnhart*, 453 F.3d 559, 562 (4th Cir. 2006); *see* 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The claimant is responsible for providing evidence the Commissioner will use to make a finding as to the claimant's RFC, but the Commissioner is responsible for developing the claimant's "complete medical history, including arranging for a consultative examination(s) if necessary, and making every reasonable effort to help [the claimant] get medical reports from [the claimant's] own medical sources." 20 C.F.R. §§ 404.1545(a)(3), 416.945(a)(3). The Commissioner also will consider certain non-medical evidence and other evidence listed in the regulations. *See id.* If a claimant retains the RFC to perform past relevant work, then the claimant is not disabled. *Id.* §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).

Fifth, if the claimant's RFC as determined in step four will not allow the claimant to perform past relevant work, then the burden shifts to the Commissioner to prove that there is other work that the claimant can do, given the claimant's RFC as determined at step four, age, education, and work experience. *See Hancock v. Astrue*, 667 F.3d 470, 472-73 (4th Cir. 2012). The Commissioner must prove not only that the claimant's RFC will allow the claimant to make an adjustment to other work, but also that the other work exists in significant numbers in the national economy. *See Walls*, 296 F.3d at 290; 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). If the claimant can make an adjustment to other work that exists in significant

numbers in the national economy, then the Commissioner will find that the claimant is not disabled. If the claimant cannot make an adjustment to other work, then the Commissioner will find that the claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v).

### III

#### **Substantial Evidence Standard**

The Court reviews an ALJ's decision to determine whether the ALJ applied the correct legal standards and whether the factual findings are supported by substantial evidence. *See Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996). In other words, the issue before the Court "is not whether [Plaintiff] is disabled, but whether the ALJ's finding that [Plaintiff] is not disabled is supported by substantial evidence and was reached based upon a correct application of the relevant law." *Id.* The Court's review is deferential, as "[t]he findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive." 42 U.S.C. § 405(g). Under this standard, substantial evidence is less than a preponderance but is enough that a reasonable mind would find it adequate to support the Commissioner's conclusion. *See Hancock*, 667 F.3d at 472; *see also Biestek v. Berryhill*, 587 U.S. \_\_\_, 139 S. Ct. 1148, 1154 (2019).

In evaluating the evidence in an appeal of a denial of benefits, the court does "not conduct a *de novo* review of the evidence," *Smith v. Schweiker*, 795 F.2d 343, 345 (4th Cir. 1986), or undertake to reweigh conflicting evidence, make credibility determinations, or substitute its judgment for that of the Commissioner. *Hancock*, 667 F.3d at 472. Rather, "[t]he duty to resolve conflicts in the evidence rests with the ALJ, not with a reviewing court." *Smith v. Chater*, 99 F.3d 635, 638 (4th Cir. 1996). When conflicting evidence allows reasonable minds to

differ as to whether a claimant is disabled, the responsibility for that decision falls on the ALJ. *Johnson v. Barnhart*, 434 F.3d 650, 653 (4th Cir. 2005) (per curiam).

#### IV

#### Discussion

Plaintiff contends that the ALJ erroneously assessed his RFC contrary to Social Security Ruling<sup>4</sup> (“SSR”) 96-8p, 1996 WL 374184 (July 2, 1996). Pl.’s Mem. Supp. Mot. Summ. J. 7-12, ECF No. 12-1. In particular, he contends that the ALJ “failed to provide a narrative discussion of any evidence, medical or non-medical, that supports the specific physical limitations found for [him] in this case.” *Id.* at 11. Plaintiff also maintains that the ALJ failed to evaluate properly his subjective statements. *Id.* at 12-15 (citing, *inter alia*, *Brown v. Comm’r Soc. Sec. Admin.*, 873 F.3d 251, 270, 271 (4th Cir. 2017)). For the reasons discussed below, the Court remands this case for further proceedings.

SSR 96-8p, 1996 WL 374184 (July 2, 1996), explains how adjudicators should assess RFC and instructs that the RFC

“assessment must first identify the individual’s functional limitations or restrictions and assess his or her work-related abilities on a function-by-function basis, including the functions” listed in the regulations. “Only after that may [residual functional capacity] be expressed in terms of the exertional levels of work, sedentary, light, medium, heavy, and very heavy.” The Ruling further explains that the residual functional capacity “assessment must include a narrative discussion describing how the evidence supports each conclusion, citing specific medical facts (e.g., laboratory findings) and nonmedical evidence (e.g., daily activities, observations).”

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<sup>4</sup> Social Security Rulings are “final opinions and orders and statements of policy and interpretations” that the Social Security Administration has adopted. 20 C.F.R. § 402.35(b)(1). Once published, these rulings are binding on all components of the Social Security Administration. *Heckler v. Edwards*, 465 U.S. 870, 873 n.3, 104 S. Ct. 1532, 1534 n.3 (1984); 20 C.F.R. § 402.35(b)(1). “While they do not have the force of law, they are entitled to deference unless they are clearly erroneous or inconsistent with the law.” *Pass*, 65 F.3d at 1204 n.3.

*Mascio v. Colvin*, 780 F.3d 632, 636 (4th Cir. 2015) (alteration in original) (footnote omitted) (citations omitted). The Fourth Circuit has held, however, that a per se rule requiring remand when the ALJ does not perform an explicit function-by-function analysis “is inappropriate given that remand would prove futile in cases where the ALJ does not discuss functions that are ‘irrelevant or uncontested.’” *Id.* (quoting *Cichocki v. Astrue*, 729 F.3d 172, 177 (2d Cir. 2013) (per curiam)). Rather, remand may be appropriate “where an ALJ fails to assess a claimant’s capacity to perform relevant functions, despite contradictory evidence in the record, or where other inadequacies in the ALJ’s analysis frustrate meaningful review.” *Id.* (quoting *Cichocki*, 729 F.3d at 177). The court in *Mascio* concluded that remand was appropriate because it was “left to guess about how the ALJ arrived at his conclusions on [the claimant’s] ability to perform relevant functions” because the ALJ had “said nothing about [the claimant’s] ability to perform them for a full workday,” despite conflicting evidence as to the claimant’s RFC that the ALJ did not address. *Id.* at 637; *see Monroe v. Colvin*, 826 F.3d 176, 187-88 (4th Cir. 2016) (remanding because ALJ erred in not determining claimant’s RFC using function-by-function analysis; ALJ erroneously expressed claimant’s RFC first and then concluded that limitations caused by claimant’s impairments were consistent with that RFC).

Here, the ALJ found that Plaintiff’s medical improvement occurred as of October 17, 2016. R. at 33. In so finding, the ALJ noted:

An internal medicine examination of [Plaintiff] by consultative examiner Dr. Lyudmila Trimba on October 17, 2016 showed: improved flexion of the lumbar spine to 40 degrees; improved strength in his left lower extremity to 4/5; and normal gait. Indeed, Dr. Trimba opined that [Plaintiff] should avoid frequent bending and had *moderate limitations in sitting, standing, and walking for a prolonged time, climbing steps, and pushing, pulling, or carrying heavy objects*. I give great weight to this opinion. As an initial matter, Dr. Trimba is familiar with the rules and regulations of the Social Security Administration. Moreover, the opinion is based on an examination of [Plaintiff] and consistent with the record, including Dr. Trimba’s own examination findings as discussed above.



R. at 33 (emphasis added) (citations omitted); *see* R. at 585-91. “But the ALJ never explained how he concluded—*based on this evidence*—that [Plaintiff] could actually perform the tasks required by” sedentary work, such as sitting for a total of six hours. *Woods v. Berryhill*, 888 F.3d 686, 694 (4th Cir. 2018); *see* SSR 83-10, 1983 WL 31251, at \*5 (Jan. 1, 1983). “The ALJ therefore failed to build an ‘accurate and logical bridge’ from the evidence he recounted to his conclusion about [Plaintiff’s RFC].” *Woods*, 888 F.3d at 694; *see Cooper v. Saul*, 444 F. Supp. 3d 565, 579-80 (S.D.N.Y. 2020).

Defendant contends that, contrary to Plaintiff’s assertion, the ALJ properly assessed his credibility. Def.’s Mem. Supp. Mot. Summ. J. 11-15, ECF No. 13-1. The Fourth Circuit recently reiterated the standard used by ALJs to evaluate a claimant’s symptoms:

When evaluating a claimant’s symptoms, ALJs must use the two-step framework set forth in 20 C.F.R. § 404.1529 and SSR 16-3p, 2016 WL 1119029 (Mar. 16, 2016). First, the ALJ must determine whether objective medical evidence presents a “medically determinable impairment” that could reasonably be expected to produce the claimant’s alleged symptoms.

Second, after finding a medically determinable impairment, the ALJ must assess the intensity and persistence of the alleged symptoms to determine how they affect the claimant’s ability to work and whether the claimant is disabled. At this step, objective evidence is *not* required to find the claimant disabled. SSR 16-3p recognizes that “[s]ymptoms cannot always be measured objectively through clinical or laboratory diagnostic techniques.” Thus, the ALJ must consider the entire case record and may “not disregard an individual’s statements about the intensity, persistence, and limiting effects of symptoms solely because the objective medical evidence does not substantiate” them.

*Arakas v. Comm’r, Soc. Sec. Admin.*, 983 F.3d 83, 95 (4th Cir. 2020) (alteration in original) (citations omitted).

Here, the ALJ found that, beginning October 17, 2016, Plaintiff’s “medically determinable impairments could reasonably be expected to produce the alleged symptoms; however, [his] statements concerning the intensity, persistence and limiting effects of these

symptoms are not entirely consistent with the medical evidence and other evidence in the record for the reasons explained in this decision.” R. at 33-34.

[T]he evidence does not support [Plaintiff’s] alleged limitations. As noted above, the October 2016 internal medicine examination showed improved range of motion in the lumbar spine, improved strength on the lower left extremity, and a normal gait. A subsequent examination in June 2018 also showed: no joint tenderness or swelling; no erythema; normal gait; and normal muscle strength and tone. Moreover, [Plaintiff] reported being able to cook, clean, do laundry, and shop on a weekly basis and shower, bathe, and dress himself on a daily basis. Further, [Plaintiff] testified that he travelled from Maryland to New York for the hearing by bus—a journey of several hours during which he stood on occasion when using the lavatory. [Plaintiff] further testified that he planned to return to Maryland by bus that night. Thus, these findings support the exertional and postural limitations set forth above.

R. at 34 (citations omitted).

Again, the ALJ did not build an accurate and logical bridge from this evidence to his conclusion that Plaintiff could perform sedentary work beginning October 17, 2016. “A claimant’s inability to sustain full-time work due to pain and other symptoms is often consistent with her ability to carry out daily activities.” *Arakas*, 983 F.3d at 101. “An ALJ may not consider the *type* of activities a claimant can perform without also considering the *extent* to which she can perform them.” *Woods*, 888 F.3d at 694 (citing *Brown*, 873 F.3d at 263). Plaintiff testified that, while riding the bus, he got up and used the bathroom frequently so he could stretch his legs (R. at 64). *See Johns v. Berryhill*, Civ. No. 18-00126 JMS-RLP, 2019 WL 1453482, at \*9 (D. Haw. Apr. 2, 2019) (“The ALJ cites Plaintiff’s bus riding as if it helps prove that he was *not* disabled; but the extensive testimony completely *supports* his claim as he explained his difficulties when riding and how he must alternate between sitting and standing six or seven times on his normal trip.”). The ALJ should explain on remand how Plaintiff’s activities show that he could persist through an eight-hour workday and sustain a full-time job. *See Arakas*, 983 F.3d at 100. Because “meaningful review is frustrated when an ALJ goes

straight from listing evidence to stating a conclusion,” the Court remands this case under the fourth sentence of 42 U.S.C. § 405(g). *Thomas v. Berryhill*, 916 F.3d 307, 311 (4th Cir. 2019) (citing *Woods*, 888 F.3d at 694).

V

**Conclusion**

For the reasons stated above, Defendant’s Motion for Summary Judgment (ECF No. 13) is **DENIED**. Plaintiff’s Motion for Summary Judgment (ECF No. 12) is **DENIED**. Plaintiff’s alternative motion for remand (ECF No. 12) is **GRANTED**. Defendant’s final decision is **REVERSED** under the fourth sentence of 42 U.S.C. § 405(g). This matter is **REMANDED** for further proceedings consistent with this opinion. A separate order will issue.

Date: March 24, 2021

\_\_\_\_\_/s/  
Thomas M. DiGirolamo  
United States Magistrate Judge